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) Application No. 76/151,380

U.S. Patent &amp; TMOfc/TM Mail Rcpt Dt. #78

INVESTIGATION AND  
ATTENTION  
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Inviro, in its failure to produce discovery responses by the deadline, and with its knowledge that a failure to timely respond to Requests to Admit are deemed admissions, has now filed this motion, *along with three other motions*, on the deadline for its responses, suggesting that its need to respond should be suspended pending the outcome of another motion. Baxter objects on numerous bases:

**1. Inviro's Filing Of a Summary Judgment Motion Should Not Be a Basis For Suspending Its Answers To Already Issued Discovery Because That Motion Was Not Timely Filed.**

Inviro's only basis for seeking this Board's permission to delay its response to Baxter's discovery is that it has now filed a motion for summary judgment which "it believes, is dispositive of this case." Without delving into the allegations of that motion, Baxter does not believe that the fact that Inviro has filed such a motion is a basis to suspend its answers to the pending discovery because Inviro's motion for summary judgment was not timely filed. The motion, which is seeking cancellation of Baxter's INTERLINK marks on the alleged basis of naked licensing, was filed on December 10, 2002. It is Baxter's understanding of the TTAB rules that it is untimely since it was filed concurrently with its motion to amend its answer and add a counterclaim for Cancellation, which was also filed on December 10, 2002. Therefore, (1) Baxter has not yet had time to object to Inviro's motion to amend, should it chose to do so, (2) the Board has not even yet issued its order granting Inviro permission to file an amended answer or issued notice with regard to the Counterclaim, and (3) Baxter has not yet been given time to respond to the Counterclaim. (T.B.M.P. 319.06). Therefore, a Motion for Summary Judgment on that counterclaim is premature and should not be considered at this time. In light of this, Baxter asks this Board to deny Inviro's motion to suspend and order the

immediate production of Inviro's responses to Baxter's pending discovery requests, issued November 5, 2002.

**2. Even If Inviro's Summary Judgment Motion Is Deemed Timely, This Motion is Not Timely, and Is Therefore Improper.**

If, for argument's sake, this Board accepts Inviro's Summary Judgment motion as timely, Baxter also submits that it would be improper to suspend Inviro's obligation to answer outstanding discovery by filing an allegedly dispositive motion on the date such discovery was due. Though Baxter acknowledges that it is standard practice to suspend proceedings once a dispositive motion is pending (37 CFR § 2.127(d)), as stated initially, Inviro's answers to Baxter's discovery were due on December 10, 2002. In other words, Inviro was obligated to prepare its answers in advance of December 10, 2002 and have those responses in the mail by that date. Instead, Inviro filed this motion—on December 10, 2002. Baxter does not believe that Inviro should be allowed to sidestep its obligations to timely respond to pending discovery by filing a summary judgment motion and request for suspension on the due date.

Inviro did not file any motion to suspend its time to respond to Baxter's additional discovery at the time it received those requests. In fact, in a letter dated November 20, 2002, Inviro stated that its failure to have previously submitted other outstanding discovery (namely, its privilege log) was due to the fact that it was "busy responding to Baxter's motions and discovery served on November 5 and 6." (see exhibit C). This statement by Inviro's counsel highlights that either (1) it has made the effort to get answers to the discovery issued and is now withholding those answers improperly because of the potential damage that could result from their disclosure, or (2) Inviro's counsel misled Baxter's counsel with regard to its efforts at conducting discovery, and

having reached the deadline without doing the necessary work, has now filed this motion, along with an allegedly “dispositive motion” in an attempt to buy itself more time.

Inviro’s counsel called Baxter’s counsel a week before the discovery was due and stated in a voice mail message that it *might* seek Baxter’s approval of additional time to answer that discovery. Baxter responded in writing, via e-mail, on December 3rd that it was not inclined to grant any extension given the nature of the information being sought and the importance of receiving prompt responses to those inquiries. (See exhibit D). It would appear that Inviro, in response to Baxter’s letter has decided to use the Board’s procedures for dispositive motions to buy itself more time. Such tactics are improper and should not be allowed.

**3. Baxter Needs The Answers To The Discovery Issued In Order to Further Prepare This Case.**

Baxter needs the answers to its discovery requests for all further preparation of this case—including answering Inviro’s pending motions. Baxter submitted its additional discovery on Inviro because, per a conference call with opposing counsel on October 23, 2002, wherein counsel for the parties discussed consolidating this Opposition with another opposition currently pending between them in relation to Inviro’s SNAPLINK mark (Opp No. 91152568), Baxter made it clear that it could not agree to consolidate *at that time* because it had not received any substantive information from Inviro through its initial discovery in this opposition (which is why Baxter filed a motion to compel, also currently pending), and could not make an informed decision regarding whether the two Oppositions were interrelated without further discovery. At that time, Inviro’s counsel suggested that it might seek the Board’s permission to consolidate regardless, and in order to respond to such a motion, Baxter’s counsel believed that formal responses to

supplemental discovery would assist in its ability to respond to such a motion and therefore, promptly issued discovery to Inviro on November 5th.

Inviro filed a "Notice and Request for Consolidation of Two Oppositions", also on December 10, 2002. As noted in the Notice, Baxter has not consented to the consolidation, and as explained previously, objects to consolidation without first learning at least minimal information from Inviro regarding its intentions for its ULTRALINK mark. Therefore, until it receives responses to its Discovery issued on November 5th, it objects to consolidation.

Further, Baxter has been preparing for a deposition of Inviro's only witness, Dr. Sharp, for several months, and given the lack of information learned in previous discovery requests, it sought further information for use in its deposition of Dr. Sharp (a motion regarding its oral deposition request is also currently pending.) Baxter's motion for an oral deposition of Dr. Sharp has already been fully briefed and it is believed that this Board may issue a ruling in that regard any day, in which case Baxter needs Inviro's answers to the already issued discovery in order to further prepare for that deposition.

### **CONCLUSION**

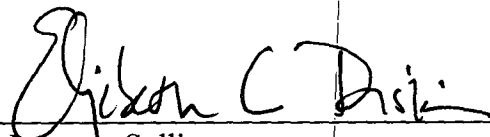
Discovery is set to close on January 30, 2003. Inviro's Motion to Suspend Its Time To Respond To Baxter's Discovery Requests should be denied because (1) the alleged dispositive motion on which it relies as a basis was improperly filed and should not yet be considered, (2) even if the summary judgment motion is considered timely, the already pending discovery should have been answered by December 10, 2002, and therefore, Inviro's motion for suspension, filed on December 10, 2002 should not be granted, because it too is untimely and improper, and (3) as Inviro is aware, Baxter needs

Inviro's answers to the discovery issued on November 5, 2002 in order to respond to Inviro's recently filed motion to consolidate and to further prepare this case. Therefore, Baxter requests that this Board deny Inviro's motion to suspend its obligations regarding discovery issued on November 5<sup>th</sup>.

Assuming this Board moves forward with the review of Inviro's recently filed Motion for Summary Judgment, Baxter does not object to suspension of all proceedings after Inviro responds to the outstanding discovery it has issued. Further, in the event that this Board suspends proceedings and grants Inviro's motion to suspend its time to respond to outstanding discovery requests, Baxter asks this Board to reset Baxter's deadline for discovery by 60 days past the ultimate date upon which it receives Inviro's discovery responses so that it may review those answers and conduct any necessary follow-up discovery before the close of the discovery period and/or file its own dispositive motions before the start of the testimony period.

Respectfully submitted,

Date: Dec 18, 2002



Lynn A. Sullivan  
Elizabeth C. Diskin  
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Chicago, Illinois 60601  
312/616-5600  
Attorneys for Opposer

A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Baxter International Inc., )  
 )  
 Opposer, )  
 )  
 v. )  
 )  
 Inviro Medical Devices Ltd., )  
 )  
 Applicant. )

12-23-2002

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #78

Opposition No. 91150298  
Application No. 76/151,380

**OPPOSER'S SUPPLEMENTAL INTERROGATORIES TO APPLICANT**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Opposer requests Applicant to answer under oath within thirty (30) days hereof the interrogatories set forth below, subject to the following definitions and instructions:

**INSTRUCTIONS AND DEFINITIONS**

A. These interrogatories shall be deemed to seek answers as of the date hereof, but shall be deemed to be continuing so that any additional information relating in any way to these interrogatories which Applicant acquires or which becomes known to Applicant up to and including the termination of the discovery period set by the Board, shall be furnished to Opposer promptly after such information is acquired or becomes known.

B. "Applicant" as used herein refers to Inviro Medical Devices Ltd., including, without limitation, any subsidiary, affiliate, division or related company of Applicant.

C. The term "document" is used in its customary sense under the applicable rules and includes, without limitation, the following items, whether printed, or recorded or reproduced by any other electronic or mechanical process or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground, namely: letters, memoranda, notes, agreements, contracts, licenses, communications including intra-company communications, correspondence, telegrams; bills of lading; warehouse receipts; orders for the delivery of goods or performance of services; documents of title; memoranda; summaries of records of personal conversations or interviews; diaries, forecasts; statistical statements; graphs, laboratory and engineering reports and notebooks; charts; plans; drawings; minutes or records of meetings; minutes or records of conferences; expressions or statements of policy; lists of persons attending meetings or conferences; reports and/or summaries of interviews; reports and/or summaries of investigations; opinions or reports of consultants; opinions of counsel; records, reports or summaries of negotiations; brochures; pamphlets, advertisements, circulars, trade letters; press releases; drafts of any documents; original or preliminary notes; photographs; all other writings and data compilation; marginal comments appearing on any document; copies which differ in any respect from an original or copy thereof; and tangible things such as models and prototypes.

D. "Person" or "persons" includes, without limitation, any natural person or individual, association, business, organization, partnership, corporation, government, organization, or formal or informal group subdivision thereof.

E. If privilege is claimed with respect to any document or oral communication of which identification is sought, the substance thereof need not be disclosed in the answer hereto, but the answer shall specify the ground for the claim,



identify the author(s) of the document or person(s) making the oral communication, all recipients of the document or persons hearing the oral communication; the date of such document or oral communication, and shall state the general subject matter to which the document or communication relates and enough of the circumstances relative thereto to explain and justify the claim of privilege sufficiently to enable the decision-making authorities to make a ruling thereon.

### INTERROGATORIES

21. Applicant's initial response to Opposer's interrogatory No. 7 stated that it seeks to use ULTRALINK in connection with "medical devices, namely, cannulae, medical, hypodermic, aspiration and injection needles, medical, hypodermic, aspiration and injection syringes, connectors, ports, catheters, and injection sites." Please specify:

- a. the specific medical procedures in which the alleged ULTRALINK cannulae would be used;
- b. the specific target users of such products, whether they be nurses, doctors, certain other medical professionals; and
- c. the specific departments within a hospital or medical treatment facility in which the products would be used--for example, in surgery applications, emergency medicine, neo-natal, intensive care, etc.

### ANSWER:

22. With regard to Applicant's response to Interrogatory No. 7, please specify:
- a. the specific medical procedures in which the alleged ULTRALINK hyodermic, aspiration and injection needles would be used;

- b. the specific target users of such products, whether they be nurses, doctors, certain other medical professionals; and
- c. the specific departments within a hospital or other medical treatment facility in which the products would be used--for example, in surgery applications, emergency medicine, neo-natal, intensive care, etc.

ANSWER:

23. With regard to Applicant's response to Interrogatory No. 7, please specify:
- a. the specific medical procedures in which the alleged ULTRALINK hypodermic, aspiration and injection syringes would be used;
  - b. the specific target users of such products—whether they be nurses, doctors, certain other medical professionals;
  - c. the specific departments within a hospital or other medical treatment facility in which such products will be used--for example, in surgery applications, emergency medicine, neo-natal, intensive care, etc.

ANSWER:

24. With regard to Applicant's response to Interrogatory No. 7, please specify :
- a. the specific medical procedures in which the alleged ULTRALINK connectors, ports, catheters, and injection sites would be used;
  - b. the specific target users of such products, whether they be nurses, doctors, certain other medical professionals;

- c. the specific departments within a hospital or other medical treatment facility in which such products will be used--for example, in surgery applications, emergency medicine, neo-natal, intensive care, etc.

ANSWER:

25. In Inviro's response to Opposer's interrogatory No. 8, it stated that it intended to sell products under the ULTRALINK mark through "the channel of trade that would be one that supplies [the goods listed in its recitation]." Please specify whether Applicant intends to sell its goods through Internet sales, direct mail, sales force, any specific distributors, or through any wholesale or retailers.

ANSWER:

26. For each of the specific channels outlined in Inviro's answer to Interrogatory #25 above, please specify what steps, if any, have been taken with regard to:

- a. investigating the costs associated with such channels,
- b. hiring a sales force or marketing agency, or
- c. contacting potential distributors, retailers, or wholesalers.

ANSWER:

27. If Applicant intends to sell ULTRALINK through channels other than those outlined in interrogatory #25 above, please specify which channels Applicant is considering and specify what steps have been taken with regard to selling goods through those channels.

ANSWER:

28. In Inviro's response to Opposer's interrogatory No. 9, it stated that it intended to advertise, promote, and market its goods "in manners typical of the channel of trade that supplies [the goods listed in its recitation.]" Please specify whether Applicant intends to:

- a. utilize print advertising, and if so, please state which publications it is considering;
- b. utilize media advertising or publicity—TV, radio and/or newspapers, and if so, please state which radio, tv stations and/or newspapers it is considering;
- c. utilize trade show opportunities, and if so, please state which trade shows it is considering;
- d. utilize the distribution of promotional gifts—and if so, please state what kind of promotional gifts are being considered and to whom would they be distributed.

ANSWER:

29. In Inviro's response to Opposer's interrogatory No. 14, it stated that its competition were "companies that sell [the goods listed in its recitation]." Please specify which companies Inviro is aware of that sell competitive goods.

ANSWER:

30. Please specify when, exactly, Inviro first became aware of Baxter's use of the INTERLINK mark and state its understanding of the products which Baxter sells under that mark.

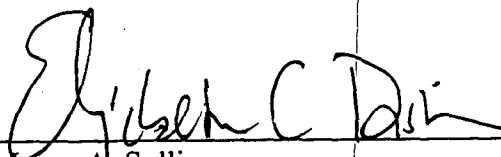
ANSWER:

31. Please state what steps have been taken by Applicant toward bringing products to market under ULTRALINK since filing the application for ULTRALINK on October 20, 2000.

ANSWER:

Date:

Nov. 5, 2002



Lynn A. Sullivan  
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Two Prudential Plaza, Suite 4900  
Chicago, Illinois 60601  
312/616-5600  
Attorneys for Opposer

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of **OPPOSER'S  
SUPPLEMENTAL INTERROGATORIES TO APPLICANT** (along with any documents referred to as being attached or enclosed) was sent on this 5<sup>th</sup> day of November, 2002, via facsimile and via United States Mail, first class postage prepaid, to:

Duane M. Byers  
NIXON & VANDERHYE P.C.  
1100 North Glebe Road, 8<sup>th</sup> Floor  
Arlington, VA 22202-4714  
Fax: 703-816-4100



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**B**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Baxter International Inc.,

Opposer,

v.

Inviro Medical Devices Ltd.,

Applicant.

Opposition No. 91150298

Application No. 76/151,380

12-23-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #78

**OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION &  
SUPPLEMENTAL REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, and T.B.M.P. § 403.01, Opposer requests Applicant to answer under oath within thirty (30) days hereof the admissions set forth below, subject to the following instructions and definitions:

**INSTRUCTIONS**

- A. Responses to requests for admission must be made in writing, and should include an answer or objection to each matter of which an admission is requested. F.R.C.P. 36(a).
- B. The Board prefers that the responding party reproduce each request immediately preceding the answer or objection thereto. See T.B.M.P. § 411.02.
- C. An answer must admit the matter of which an admission is requested; deny the matter; or state in detail the reasons why the responding party cannot truthfully admit or deny the matter. T.B.M.P. § 411.02.
- D. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. F.R.C.P. 36(a).

E. If the responding party objects to a request for admission, the reasons for objection must be stated. T.B.M.P. § 411.02.

### **DEFINITIONS**

A. "Applicant" as used herein refers to Inviro Medical Devices Ltd., including, without limitation, any subsidiary, affiliate, division or related company of Applicant.

B. The term "document" is used in its customary sense under the applicable rules and includes, without limitation, the following items, whether printed, or recorded or reproduced by any other electronic or mechanical process or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground, namely: letters, memoranda, notes, agreements, contracts, licenses, communications including intra-company communications, correspondence, telegrams; bills of lading; warehouse receipts; orders for the delivery of goods or performance of services; documents of title; memoranda; summaries of records of personal conversations or interviews; diaries, forecasts; statistical statements; graphs, laboratory and engineering reports and notebooks; charts; plans; drawings; minutes or records of meetings; minutes or records of conferences; expressions or statements of policy; lists of persons attending meetings or conferences; reports and/or summaries of interviews; reports and/or summaries of investigations; opinions or reports of consultants; opinions of counsel; records, reports or summaries of negotiations; brochures; pamphlets, advertisements, circulars, trade letters; press releases; drafts of any documents; original or preliminary notes; photographs; all other writings and data compilation; marginal comments appearing on any document; copies which differ in any respect from an original or copy thereof; and tangible things such as models and prototypes.



### REQUESTS FOR ADMISSIONS

1. Applicant's intent to use application for ULTRALINK is for the same goods covered in its intent to use application for UNILINK.

ANSWER:

2. Applicant's intent to use application for ULTRALINK is for the same goods covered in its intent to use application for SNAPLINK.

ANSWER:

3. Applicant has no marketing plan for the products it allegedly intends to sell under ULTRALINK.

ANSWER:

4. Applicant has no written marketing plan for the products it allegedly intends to sell under ULTRALINK.

ANSWER:

5. Applicant has no documents regarding its intended marketing of ULTRALINK products.

ANSWER:

6. Applicant has incurred no expenditures in marketing the alleged ULTRALINK products.

ANSWER:

7. Applicant has no advertising or promotional budget planned for the products it allegedly intends to sell under ULTRALINK.

ANSWER:

8. Applicant has no written advertising or promotional budget planned for the products it allegedly intends to sell under ULTRALINK.

ANSWER:

9. Applicant has no documents regarding its projected budget or expenditures associated with marketing the alleged ULTRALINK products.

ANSWER:

10. Applicant has no documents regarding its projected sales of alleged ULTRALINK products.

ANSWER:

11. Applicant has no documents regarding its analysis of competitive products of the alleged ULTRALINK products.

ANSWER:

12. Applicant has not conducted any market research in connection with any goods for which it listed in its ULTRALINK application recitation.

ANSWER:

13. Applicant has not conducted any market research in connection with determining the channels through which it will market ULTRALINK products.

ANSWER:

14. Applicant has not taken steps to acquire distributors in the U.S. of the products it allegedly intends to sell under ULTRALINK.

ANSWER:

15. Applicant has no specific intentions with regard to using ULTRALINK in the United States.

ANSWER:

16. Applicant cannot specify its proposed use of the products it will allegedly sell under ULTRALINK.

ANSWER:

17. Applicant has not developed any product it alleges it will market under ULTRALINK.

ANSWER:

18. Applicant has not produced any documents regarding the development of any product it alleges it will market under ULTRALINK.

ANSWER:

19. Applicant has not conducted any product testing for the goods it alleges it will sell under ULTRALINK.

ANSWER:

20. Applicant has no documents regarding its decision to apply for ULTRALINK.

ANSWER:

21. Applicant's alleged ULTRALINK products are intended for use in hospitals.

ANSWER:

22. Applicant's alleged ULTRALINK products can be used by nurses in hospitals.

ANSWER:

23. Applicant's alleged ULTRALINK products are intended for use in nursing homes.

ANSWER:

24. Applicant's alleged ULTRALINK products are intended for use in long-term care facilities.

ANSWER:

25. Applicant's alleged ULTRALINK products are intended for use in connection with intravenous applications.

ANSWER:

26. Applicant's alleged ULTRALINK products will compete with Baxter's INTERLINK products.

ANSWER:

27. The recitation of goods in Applicant's ULTRALINK application covers a broad range of goods, all of which could be used in an IV access system.

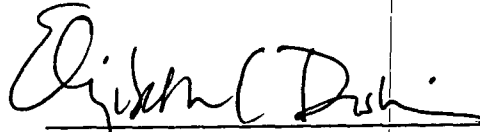
ANSWER:

**SUPPLEMENTAL REQUEST FOR PRODUCTION OF DOCUMENTS**

41. Pursuant to Rule 34 of the Federal Rules of Civil Procedure, and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Opposer requests Applicant to produce to Opposer's counsel, per the signature page below, within thirty (30) days hereof, all documents in support of all answers in which Applicant denies the truth of the admission requested.

Date:

November 5, 2002

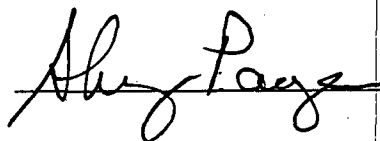


Lynn A. Sullivan  
Elizabeth C. Diskin  
LEYDIG, VOIT & MAYER, LTD.  
Two Prudential Plaza, Suite 4900  
Chicago, Illinois 60601  
312/616-5600  
Attorneys for Opposer

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of **OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION & SUPPLEMENTAL REQUEST FOR PRODUCTION OF DOCUMENTS** (along with any documents referred to as being attached or enclosed) was sent on this 5<sup>th</sup> day of November, 2002, via facsimile and via United States Mail, first class postage prepaid, to:

Duane M. Byers  
NIXON & VANDERHYE P.C.  
1100 North Glebe Road, 8<sup>th</sup> Floor  
Arlington, VA 22202-4714  
Fax: 703-816-4100

A handwritten signature in cursive script, appearing to read "Duane M. Byers", is written over a horizontal line.

# Nixon & Vanderhye P.C.

ATTORNEYS AT LAW

1100 NORTH GLEBE ROAD, SUITE 800  
ARLINGTON, VIRGINIA 22201-4714

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Direct: 1.703.816.4009  
[dmb@nixonvan.com](mailto:dmb@nixonvan.com)

November 20, 2002

Lynn A. Sullivan, Esq.  
LEYDIG, VOIT & MAYER, LTD.  
Two Prudential Plaza, Suite 4900  
Chicago, IL 60601

**RECEIVED**  
DEC 10 2002  
LEYDIG, VOIT & MAYER

**Subject: U.S. Trademark Opposition**  
**Baxter v. Inviro**  
**Mark: ULTRALINK**  
**Your ref: 213453**  
**Our ref: 968-154**

Dear Lynn:

In response to my request, thank you for confirming by telephone on November 15, that Baxter has produced all of its policing and licensing information (including actual licenses and quality control information) concerning the INTERLINK trademark. As confirmed on the phone, this renders moot our concern about Baxter's withholding of information on these topics.

I also realize that our phone discussion did not concern Inviro's continued request for Baxter's information on its other LINK marks in the medical field. This issue is still the subject of Inviro's cross-motion to compel. As previously discussed, we have "agreed to disagree" on this issue and, consequently, have agreed to let the Board handle the issue.

Finally, as mentioned during our phone discussions, I hope to send you our privilege logs in the near future. Thank you for your patience. At present, I am busy responding to Baxter's motions and discovery served on November 5 and 6.

Very truly yours,



---

Duane M. Byers

DMB:lfo

**Diskin, Elizabeth**

---

**From:** Diskin, Elizabeth  
**Sent:** Tuesday, December 03, 2002 3:30 PM  
**To:** Duane M. Byers (E-mail)  
**Cc:** Sullivan, Lynn  
**Subject:** BAXTER V. INVIRO

Our reference: 213453

Duane,

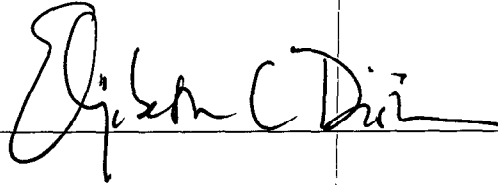
As your recent voice mail acknowledged, we are looking forward to your responses to our more recent discovery requests by December 10. Please be advised that we are not inclined to grant any extension requests. I know you haven't asked for an extension at this point, but your last message to Lynn suggested that you might be doing so. Given that the requests are really follow up questions to the discovery propounded more than six months ago, we don't think it should be overly burdensome to provide responses within the standard time frame. Further, we feel that the information we have asked for is crucial in order to further prepare this case, prepare for any deposition of Inviro, and respond to any motion you may file. So we thank you in advance for your timely responses.

Talk to you soon,  
Elizabeth

**CERTIFICATE OF MAILING**

I hereby certify that the **BAXTER'S RESPONSE IN OPPOSITION TO  
INVIRO'S MOTION TO SUSPEND ITS TIME TO RESPOND TO BAXTER'S  
DISCOVERY REQUESTS** (along with any documents referred to as being attached or  
enclosed) is being deposited with the United States Postal Service as first class mail in an  
envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, **Box  
TTAB-NO FEE**, Arlington, Virginia 22202-3513 on December 18, 2002

Date: December 18, 2002

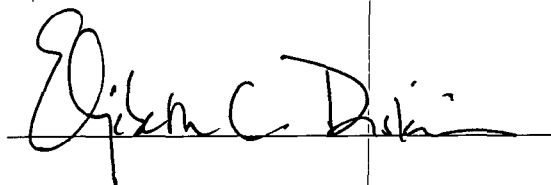
A handwritten signature in black ink, appearing to read "John C. Dill", is written over a horizontal line.



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of **BAXTER'S RESPONSE  
IN OPPOSITION TO INVIRO'S MOTION TO SUSPEND ITS TIME TO RESPOND  
TO BAXTER'S DISCOVERY REQUESTS** (along with any documents referred to as  
being attached or enclosed) was sent on this 18<sup>th</sup> day of December, 2002, via United States  
Mail, first class postage prepaid, to:

Duane M. Byers  
NIXON & VANDERHYE P.C.  
1100 North Glebe Road, 8<sup>th</sup> Floor  
Arlington, VA 22202-4714  
Fax: 703-816-4100

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Baxter International Inc.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No.: 91150298
	)	Application No. 76/151,380
Inviro Medical Devices, Ltd.	)	
	)	
Applicant.		

**BAXTER'S RESPONSE IN OPPOSITION TO INVIRO'S "NOTICE AND  
REQUEST FOR CONSOLIDATION OF TWO OPPOSITIONS"**

In response to Inviro's "Notice and Request for Consolidation of Two Oppositions", filed on December 10, 2002, Baxter hereby files its timely Response in Opposition to that motion pursuant to 37 CFR § 2.127(a).

Counsel for Inviro and Baxter have discussed the potential consolidation of the ULTRALINK opposition (No. 91150298) and the SNAPLINK opposition (No. 91152568) on several occasions. However, as Baxter's counsel has made clear to Inviro on these occasions, although the parties to the actions are the same, and Baxter's objection to both marks is based on its rights and uses of its INTERLINK mark, it did not believe that it could make an informed judgment regarding whether consolidation of the matters was practical until Baxter receives at least some substantive information from Inviro regarding its intended uses of the ULTRALINK mark. Baxter had informed Inviro that once some concrete information on intended products and markets were produced, Baxter would consider consent to consolidation, but stressed that it needs the information from Inviro in order to assess whether consolidation is appropriate. Inviro has been

unable or unwilling to give Baxter any information on proposed products it will market under the ULTRALINK mark, other than to recite the laundry list of products proposed in its application, and Inviro has been unable or unwilling to pinpoint its intended market or trade channels other than stating that it would target markets and trade channels that use products listed in its recitation.

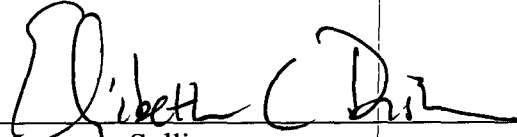
Baxter has a fully briefed and pending Motion to Compel before the Board with regard to numerous outstanding discovery issues in the ULTRALINK matter, and on November 5, 2002, Baxter issued follow-up discovery to Inviro in the ULTRALINK matter in order to again try to clarify the issues, and in order to determine whether consolidation of the matters would be prudent. Inviro's response deadline to that discovery was December 10, 2002, and instead of sending such discovery responses to Baxter, Inviro filed this motion to consolidate, as well as a motion to suspend its deadline for answering the outstanding discovery, among other motions. Again, Inviro tries to keep Baxter from obtaining the information it needs to respond to this motion and the case as a whole. (Baxter is simultaneously filing a response to Inviro's motion to suspend, likewise seeking this Board's denial of that request.)

Inviro's counsel is fully aware that Baxter issued the supplementary discovery on November 5, 2002 in light of Inviro's request to consent to consolidate and that Baxter awaits those responses in order to make an informed decision as to whether the issues of fact and law are the same and whether consolidation is appropriate. Therefore, at this time, Baxter objects to Inviro's motion to consolidate, and asks this Board to deny granting such consolidation until Baxter has been given the full discovery it has

requested, and it can learn whether Inviro's intended uses of the marks at issue are actually the same.

Respectfully submitted,

Date: Dec. 18, 2002



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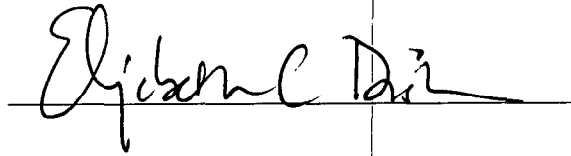
Attorneys for Opposer

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**CERTIFICATE OF MAILING**

I hereby certify that the **BAXTER'S RESPONSE IN OPPOSITION TO INVIRO'S "NOTICE AND REQUEST FOR CONSOLIDATION OF TWO OPPOSITIONS"** (along with any documents referred to as being attached or enclosed) is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, **Box TTAB-NO FEE**, Arlington, Virginia 22202-3513 on December 18, 2002

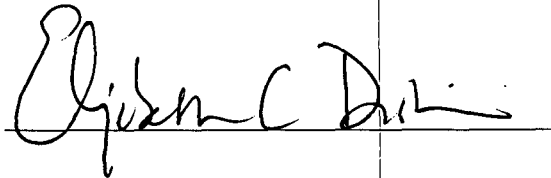
Date: December 18, 2002

A handwritten signature in cursive script, appearing to read "Eliehn C. Dair", is written over a horizontal line.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of **BAXTER'S RESPONSE  
IN OPPOSITION TO INVIRO'S "NOTICE AND REQUEST FOR  
CONSOLIDATION OF TWO OPPOSITIONS"** (along with any documents referred to  
as being attached or enclosed) was sent on this 18<sup>th</sup> day of December, 2002, via United  
States Mail, first class postage prepaid, to:

Duane M. Byers  
NIXON & VANDERHYE P.C.  
1100 North Glebe Road, 8<sup>th</sup> Floor  
Arlington, VA 22202-4714  
Fax: 703-816-4100

A handwritten signature in cursive script, appearing to read "Duane M. Byers", is written over a horizontal line.